

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2007-000261

10/16/2007

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
S. Brown  
Deputy

LUZ SOCIAL SERVICES INC

DENISE M BANTON

v.

ARIZONA STATE BOARD OF  
EQUALIZATION

REX C NOWLAN

TERRI A ROBERTS

**UNDER ADVISEMENT RULING**

**(Plaintiff's Petition/Complaint For Special Action Relief/Petition For Order To Show Cause)**

The facts before the Court were considerably augmented by the oral argument. Plaintiff filed a timely petition for tax-exempt status for the 2001 tax year. The Pima County Assessor denied it. Plaintiff filed a notice of claim under the error-correction statute, A.R.S. § 42-16254, alleging that the Assessor's decision was erroneous. After the State Board of Equalization declined to review the decision in light of the ruling of the Tax Court in *Lyons v. State Bd. of Equalization*, TX2003-000123, the Court of Appeals reversed *Lyons*, holding that the error-correction statute is available for the appeal of a denial of tax-exempt status. *Lyons v. State Bd. of Equalization*, 209 Ariz. 497 (App. 2005). In reliance on this decision, Plaintiff filed a special action. The Superior Court ordered the Board to hear Plaintiff's appeal. The Board did meet and concluded that it was barred from granting the appeal because Plaintiff had not paid the taxes due on the property prior to delinquency. The present special action seeks to require the Board to reach a decision on the merits, implicitly seeking a ruling that the Board's interpretation of A.R.S. § 42-16210 was incorrect.

As a result of Judge Ryan's order, the process picks up near the end of A.R.S. § 42-16254(F): "On receiving the petition, the appropriate board shall hold a hearing on the proposed correction and shall issue a written decision pursuant to the board's rules." It did so. Unlike the

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situation in the earlier special action, the Board did act, so there was a final action from which Plaintiff could have appealed. Resuming at subsection G, “A party that is dissatisfied with the decision of the ... state board may appeal the decision to court within sixty days after the date the board’s decision is mailed, but any additional taxes that are determined to be due must be timely paid before delinquency for the court to retain jurisdiction of the matter.” Far more than sixty days elapsed between the date the Board’s decision was rendered (the Court does has not been given the exact date of mailing, but assumes that it was within a few days of the decision) and the date this special action was filed. Moreover, Plaintiff has not paid the taxes determined to be due. While under the circumstances of the case, payment prior to delinquency would be an impossibility (since the delinquency date was years past when the Board finally held its hearing), payment promptly upon receiving the adverse ruling was possible; instead, Plaintiff has to this day not paid the taxes. Under the statute, payment of the tax is mandatory to preserve the appeal. Plaintiff attempts to finesse this by asserting that, in holding that its hands were tied by A.R.S. § 42-16210, the Board had in fact refused to conduct the hearing required by the statute and by Judge Ryan’s order. It appears to this Court that Plaintiff got what it was entitled to from the Board: a hearing and a written decision. If it disagreed with that decision, its remedy was to appeal pursuant to subsection G. Special action relief is to be reserved for “extraordinary circumstances” in which there exists no plain, speedy, and adequate remedy by appeal. *Williams v. Miles*, 212 Ariz. 155, 156 ¶ 9 (App. 2006). As subsection G provides for such a remedy, special action relief is not available even if it would otherwise lie. Rule 1(a), Ariz.R.P.Spec.Act. In addition, whether or not the Board was correct as a matter of law that the tax had to be paid before *it* could exercise jurisdiction, the statutory language is clear that the tax must be paid before *the court* can exercise jurisdiction.

Therefore, IT IS ORDERED denying/dismissing Plaintiff’s Petition/Complaint For Special Action Relief and Petition For Order To Show Cause.